IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

A.R.No.53 of 2006

APPLICANT:-

HYDRO - TECH,
ENGINEERS & CONTRACTORS,
PTC TOWER, S.S. COIL ROAD,
THAMPANOOR, TRIVANDRUM-695 001.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

OPPOSITE PARTIES:-

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1. THE KERALA WATER AUTHORITY,
JALA BHAVAN, TRIVANDRUM,
REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE SUPERINTENDING ENGINEER,
PUBLIC HEALTH CIRCLE, KERALA WATER AUTHORITY,
TRIVANDRUM-695 033.

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 13/12/2006, ALONG WITH A.R.NOS.54/2006 & 55/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

V.K.Bali,C.J.

Arbitration Request Nos.53, 54 & 55 of 2006

Dated, this the 13th day of December, 2006

ORDER

V.K.Bali,C.J. (Oral)

By this common order I propose to dispose three connected Arbitration Requests/Applications, as the same are based upon identical facts.

2. Notices in these applications were issued on 15th November, 2006. As per office report, service is complete, but nobody has chosen to appear on behalf of the respondents.

3. The prayer made in these applications filed under Section 11(6) and (8) of the Arbitration and Conciliation Act, hereinafter referred to "Act of 1996", is to appoint an Arbitrator. The bare minimum facts that need necessary mention are extracted from Arbitration Request No.53 of 2006 (**Hydro-Tech** v. **The Kerala Water Authority**). The case of the petitioner is that the work of "R.W.S.S. to Nemom (LIC Aided)" was awarded to the applicant by a selection notice on 27.2.1990 and a formal contract agreement dated 21.3.1990 was entered into between the applicant and the 1st Opposite Party acting through the 2nd

Opposite Party. 26.2.1991 was the date stipulated for completion of the work, but the work was completed in November, 1991. On 29.6.1995, the Chief Engineer of the Opposite Parties directed the 2nd Opposite Party and the Executive Engineer to release 75% of the proposed rates for all extra items as secured advance and 85% for excess quantities of agreed items in anticipation of sanction to the revised estimate, but of no avail. On 9.1.2006, the applicant notified the 2nd Opposite Party to intimate the amount due and payable as per the revised estimate and the time frame within which sanction would be accorded and payment made against final bill. The 2nd Opposite Party intimated the applicant that the revised estimate was Rs.105.01 lakhs and that the payment could be made only after sanction was obtained on 19.5.2006. The applicant issued claim notice on 30.6.2006 calling upon the Opposite Parties to pay an amount of Rs.2,26,28,299/- within fifteen days. On 15.9.2006, the applicant notified the 2nd Opposite Party that disputes and differences having arisen between the applicant and the Opposite Parties, the 2nd Opposite Party should enter upon, adjudicate and decide the disputes between the parties, but despite the lapse of more than thirty days after the receipt of notice dated 15.9.2006, the 2nd

Opposite Party failed to perform the functions entrusted to him under the contract to act as Arbitrator. Hence the present application for appointment of Arbitrator.

4. The applicant has signed the contract as per Madras Detailed Standard Specifications and addenda volume thereto maintained in the Division Office in acknowledgment of being bound by all the conditions of the clauses of the Standard Preliminary Specification and all the Standard Specifications for items of work described by a Standard Specification number in Schedule-A. The counsel says that the Book referred to above contains an arbitration clause. In view of the uncontroverted pleadings made in the application referred to above, I appoint Sri.Justice B.M.Thulasidas, former Judge of this Court, residing at "Rohini", Temple Lane (South), Ravipuram, Kochi-682015 as Arbitrator.

The applications are disposed of as indicated above.

V.K.Bali
Chief Justice

vku/-